

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Marc Peters-Golden *et al.*

Serial No.: 09/291,656

Group No.: 1653

Filed: 03/03/1999

Examiner: Carlson, K.

Entitled: **Administration Of Products Of The 5-Lipoxygenase Metabolic
Pathway To Enhance Antimicrobial Defense**

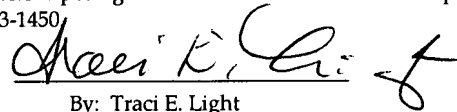
**REQUEST TO WITHDRAW FINALITY OF FINAL
OFFICE ACTION MAILED SEPTEMBER 14, 2007**

Mail Stop - Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)(1)(i)(A)

I hereby certify that this correspondence (along with any referred to as being attached or enclosed) is, on the date below, being deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: October 29, 2007


By: Traci E. Light

Examiner Carlson:

The Applicants respectfully request that the Examiner consider withdrawing the pending Final Office Action as being prematurely issued. The Applicants have diligently pursued the prosecution in good faith and in accordance with USPTO guidelines:

The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off ...

MPEP §706.07 Final Rejection [emphasis added]. Further, the Applicants have not engaged in any behavior intended to unfairly prolong the examination:

...the applicant who dallies in the prosecution of his or her application, resorting to technical or other obvious subterfuges in order to keep the application pending before the primary examiner, can no longer find a refuge in the rules to ward off a final rejection.

MPEP §706.07 Final Rejection. On the contrary, the Applicants have objectively considered the Examiner's arguments and provided claim amendments where appropriate. In response, the Examiner has withdrawn some rejections and/or objections. In other words, progress is being made on this application. A Final Rejection at this point unfairly truncates the Applicants' entitlement to a full and fair hearing:

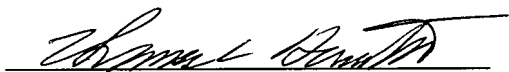
The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing ...

MPEP §706.07 Final Rejection. At the request of the Board, Applicants amended Claim 28 to recite "an article of manufacture" instead of "a composition" to improve clarity. The Examiner admits this amendment overcomes the Boards' indefinite rejection but unfairly insists that the rejection can only be lifted by the Board. In this Final Office Action, the Examiner has issued a new rejection to Claims 28-37 based upon Written Description. The Applicants have previously presented similar claims, without rejection.

The Examiner, therefore, is now resorting to "piecemeal examination" where it can be reasonably assumed that the Applicants have no rebuttal if the present finality stands. In fact, the Applicants believe that the claim amendments and argument in the previous office action should have resulted in allowance of the claims.

Consequently, the Applicants respectfully request that the Examiner consider withdrawing the present final office action.

Dated: October 29, 2007



Thomas C. Howerton
Registration No. 48,650

MEDLEN & CARROLL, LLP
101 Howard Street, Suite 350
San Francisco, California 94105
617.984.0616